

**REAL ESTATE COUNCIL OF ALBERTA**  
**NOTICE OF ADMINISTRATIVE PENALTY**

**To: Dallas Lynn Ellerby, Associate  
Big Sky Real Estate Ltd.  
602- 2 Avenue W, Mail Box 517  
Hanna, AB T0J 1P0**

In accordance with section 83 and the Bylaws of the *Real Estate Act* R.S.A. 2000 c. R-5, (Act), the Executive Director of the Real Estate Council of Alberta (RECA) has determined that there is sufficient evidence of conduct deserving of sanction in regard to you, Dallas Lynn Ellerby (Mr. Ellerby), at all relevant times a real estate associate, registered with Big Sky Real Estate Ltd. (Big Sky), presently registered with Big Sky, to assess an Administrative Penalty. The evidence giving rise to the Executive Director's decision is as follows.

September 17, 2011, the property located at W4 R14 TWP33 Sec25 Part E1/2 320+ acres (the property), was to be auctioned by Dunkle Auction Services, located in Castor, AB. You agreed to handle the real estate transaction as a favor to the auctioneers, and state you intended not to charge a commission.

September 17, 2011, you completed an Agricultural Seller Brokerage Agreement (MLS® Listing Contract) on behalf of J.U. and L.U. for the property. At this time you informed the seller that commissions were not owed. Additionally the contract you prepared on behalf of the seller detailed remuneration was not payable to the brokerage.

September 17, 2011, you facilitated a transaction between the sellers and the buyers, G.R. and G.N., at which time you state all parties were aware of your role and that they acknowledged in writing that they were being treated as customers in relation to this transaction. Additionally, you had informed your broker that commissions were not owed and the brokerage was to provide conveyancing at no cost to the parties involved.

On or about November 2, 2011, a fee was paid directly to you from Dunkle Auction Services in the amount of \$2,318.88. You state this fee was provided as compensation to you for assisting with the real estate transaction. The cheque was not paid through your brokerage, but was issued to you directly.

The Executive Director is of the opinion that the above noted conduct is in violation of section 54(1)(c) of Rules made pursuant to the Act which sets out that:

*54(1) A real estate broker, associate broker or associate, as the case may be, must not:*

*(c) accept a commission, referral fee or other remuneration, directly or indirectly, to any person resulting from or in connection with a trade in real estate except through the brokerage with which he is registered;*

In accordance with section 39 and section 83 of the Act and Part 4 of the Act's Bylaws, an Administrative Penalty in the amount of **\$1,500** has been assessed against you for this contravention.

The circumstances of this matter indicate the following aggravating and mitigating factors were considered:

### ***Aggravating Factors***

- You have been a licensed real estate associate since January, 2007 and ought to have been aware of the legislation relating to receiving remuneration
- You did not seek guidance from your broker or other industry professional on this matter
- There is a need to deter this type of conduct in the industry

### ***Mitigating Factors***

- You have had no prior discipline or complaints against you
- This behavior was an isolated incidence
- Upon receipt of the funds you did notify your broker that you were in receipt of the money paid to by Dunkle Auction Services

Payment of this Administrative Penalty shall be accepted by the Executive Director as complete satisfaction of the amount of the penalty and no further proceedings under Part 6 of the Act will be taken against you in respect of the contravention. A person who pays an Administrative Penalty may not be charged under the Act with an offence in respect of those contraventions.

This sum of **\$1,500** is payable to RECA within thirty (30) days of the date of issuance of this Notice of Administrative Penalty. If you fail to pay the amount set out in this notice, the Executive Director may commence legal action against you to recover the amount owing in respect of the Administrative Penalty as a debt due to RECA.

If you dispute this Notice of Administrative Penalty in accordance with section 83.1 of the Act, you may appeal it to a Hearing Panel. You will be given a full opportunity consistent with procedural fairness and natural justice to present evidence before the Hearing Panel and make representations in relation to the contravention.

If you have any questions in regard to this Notice of Administrative Penalty, please contact Carla Sasley, Professional Conduct Review Officer, at RECA.

DATED this 17<sup>th</sup> day of January, 2012.

**REAL ESTATE COUNCIL OF ALBERTA**

Per: *Charles Stevenson*, for  
Bob Myroniuk  
Executive Director

cc: Ira Ross, Broker  
Big Sky Real Estate Ltd.